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THE MONEY LAUNDERING CRIMES ACT OF 1986

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Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2683]

The Committee on the Judiciary, to which was referred the bill (S. 2683) to create a Federal offense against money laundering, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

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I. PURPOSE

The purposes of S. 2683, the Money Laundering Crimes Act of 1986, are: To create a Federal offense against money laundering; to authorize forfeiture of the profits earned by launderers; to encourage financial institutions to come forward with information about money launderers without fear of civil liability; to provide Federal law enforcement agencies with additional tools to investigate money laundering; and to enhance the penalties under existing law in order to further deter the growth of money laundering. The

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Committee believes that only through the collective effort of Federal law enforcement agencies, financial institutions, and individuals will the Government be successful in its efforts to curb the spread of money laundering, by which criminals have successfully disguised the nature and source of funds from their illegal enterprises.

II. Background

On July 28, 1983 the President established the Commission on Organized Crime, which, among other responsibilities, was charged with reporting recommendations to the President on legislative changes to combat organized crime and improve the administration of justice. In October, 1984 the Commission issued an interim report entitled "The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering. This report illustrated the steady growth and pervasiveness of money laundering in the United States and the nexus between money laundering and organized criminal activity. Additionally, the report included administrative and legislative proposals and voluntary guidelines for financial institutions to fight money laundering.

The growth of money laundering has been a corollary of the spread of profitable illegal enterprises. The criminals involved in these enterprises have devised complex schemes to disguise the illegal nature and true source of their income. Participants in such schemes span the spectrum from individuals to legitimate businesses to organized crime. The schemes themselves have grown in magnitude and intricacy in recent years, outstripping the ability of Federal law enforcement agencies to keep pace with effective prosecution under the existing law. In the interim report, the Commission noted, at page 8:

> Ultimately, the degree of sophistication and complexity in a laundering scheme is virtually infinite, and is limited only by the creative imagination and expertise of the criminal entrepreneurs who devise such schemes . . . [i]n recent years . . . [criminals] have mastered the details of modern technology, international finance, and foreign secrecy laws to create a select fraternity of money laundering professionals. As a result, organized crime today uses banks and other financial institutions as routinely, if not as frequently, as legitimate businesses.

Although it is difficult to determine with accuracy how much money is laundered each year, a recent Wall Street Journal article estimated that drugs, gambling, and vice generate $150 billion annually.

Originally enacted in the 1970's, the Bank Secrecy Act (also known as the Currency and Foreign Transactions Reporting Act) was the principal tool against money laundering, although prosecutions were not particularly numerous. Under the act, financial institutions are required to report domestic transactions of currency or its equivalent in amounts of more than $10,000, currency or monetary instruments taken into or out of the country of more than $10,000, and foreign bank accounts with more than $10,000.

Until recently, the Currency Transaction Report [CTR], Currency or Monetary Instruments Report [CMIR], and Foreign Bank Account Report [FBAR] requirements were not rigorously enforced. On October 29, 1985, the General Accounting Office [GAO] testified before the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs that there had been poor coordination of enforcement activities, and relatively little attention to the reporting requirements by either the private sector or the Department of Treasury.

Indeed, even after there began to be more rigorous enforcement of the reporting requirements, questions were raised about the Treasury Department's ability to process the reports filed in time to enable apprehension of money launderers. As of the date of this report, the Treasury Department has been able to eliminate the backlog of CTR's and can now process the current level of 60,000 CTR's per week. Several successful prosecutions under the act, however, have also underscored the need for stiffer penalties and for protection for financial institutions wishing to come forward with information about money laundering activities. It became evident that many institutions were reticent to come forward with such information for fear of civil liability under State law.

More troubling, the courts have been reluctant to interpret the reporting requirements of the Bank Secrecy Act to apply to customers as well as to financial institutions. The anomalous result has been that customers who intentionally structure transactions to avoid these reporting requirements cannot be prosecuted under the Bank Secrecy Act in some jurisdictions. In testimony before the Senate Judiciary Committee on March 18, 1986, representatives of the U.S. Department of Justice expressed their continuing concern about court interpretations of the Bank Secrecy Act as well as their inability to deter laundering with the enforcement tools presently available. At a hearing before the Senate Committee on the Judiciary on March 18, 1986, Assistant Attorney General Stephen S. Trott stated: "There are many forms of money laundering which are not covered and could never be covered by the Bank Secrecy Act even if further amended. Criminals are very imaginative in circumventing even the best drawn regulations."

Similarly, U.S. Attorney William Weld, from Massachusetts, noted that large amounts of cash, generated through narcotics deals on the street, organized crime "businesses" such as gambling, prostitution, and loansharking, pose a serious problem for which the services of launderers have been needed. In the opinion of these Federal law enforcers and other witnesses who testified, only a substantive prohibition of the act of laundering will deter and significantly decrease money laundering.

Recognizing the paramount importance of money laundering legislation, the Senate Committee on the Judiciary prepared a consensus bill, having strong bipartisan support. The chairman of the Senate Committee on the Judiciary, Senator Strom Thurmond (R-S.C.), noted: [In introducing legislation to deter money laundering] (Congressional Record, July 24, 1986 at S 9626):

> The President's Commission on Organized Crime has identified money laundering as one of the greatest chal-

> lenges facing law enforcement today. A recent Wall Street Journal article states that illegal drugs, gambling, and vice generate $150 billion annually. It is readily apparent that criminals rely on laundering schemes to hide the identity and true source of these proceeds. While some criminal organizations still employ such crude methods of laundering as smuggling suitcases full of money to offshore banks, many now employ professionals to devise and assist in complex laundering operations. Most disturbing is the increasing willingness of a few dishonest attorneys, accountants, and bankers to participate in these sophisticated schemes.

The importance of enacting a new Federal offense against money laundering has been poignantly underscored by recent efforts to combat narcotics trafficking. The Ranking Minority Member of the Senate Committee on the Judiciary, Senator Joseph Biden (D-Del.) stated, upon the introduction of S. 2683, (*Id.* at S 9627):

> Money laundering is a crucial financial underpinning of organized crime and narcotics trafficking. Without money laundering, drug traffickers would literally drown in cash. Drug traffickers need money laundering to conceal the billions of dollars in cash generated annually in drug sales and to convert his cash into manageable form . . . Regrettably, every dollar laundered means another dollar available to support new supplies of cocaine and heroin on the streets of this country.

III. History of S. 2683

Although the history of S. 2693 itself is brief, the bill has its roots in several Senate bills introduced earlier in the 99th Congress. In the course of Committee hearings on money laundering, substantial concerns were raised about these bills. However, because of the importance of enacting money laundering legislation, Senator Thurmond, Senator Biden, and Senator DeConcini worked with other members of the Committee to address the concerns raised and to formulate consensus money laundering legislation. It is that process that forms the history of S. 2683.

A. PRIOR SENATE BILLS

The first money laundering bills introduced in the Senate during the 99th Congress were S. 571 and S. 572, two bills sponsored by Senators D'Amato, Hawkins, Proxmire, Abdnor, Riegle, and Wilson. S. 571 proposed to give Treasury officials summons authority to investigate violations of the Bank Secrecy Act and to raise the penalties for violation of that act. S. 572, which was crafted from the recommendations of the President's Commission on Organized Crime, proposed to create a crime of money laundering, applicable to bank transactions which a participant had "reason to know" involved money derived from unlawful activity.

Subquently, Senators Thurmond, D'Amato, Roth, Denton, and Hawkins introduced a somewhat different money laundering bill, that included language proposed by the Department of Justice.

That bill, S. 1335, introduced by request of the administration, proposed to create a crime of money laundering applicable to all commercial transactions in which a participant knew the funds involved were derived from crime or acted in reckless disregard of that fact. Like S. 571, the administration's bill provided the Treasury Department summons authority to investigate Bank Secrecy Act violations and proposed to increase the penalties for violation of the Act.

Unlike S. 571 and S. 572, however, S. 1335 included several other provisions that dealt with issues beyond money laundering. For one, it amended the Right to Financial Privacy Act to encourage banks to turn over customers' records to law enforcement officials in a variety of circumstances. It amended Rule 17 of the Federal Rules of Criminal Procedure to enable courts to order that grand jury witnesses not reveal they have testified and created new Federal crimes of facilitation and receiving the proceeds of crime. It also added authority to forfeit funds involved in laundered transactions.

Senator DeConcini (D-Ariz.) introduced a third money laundering bill, S. 1385. This bill was similar to S. 571 and S. 572, the Organized Crime Commission bills, except that it included additional criminal penalties for violation of the Bank Secrecy Act. It also included a provision requiring banks to provide the Treasury Department on a quarterly basis with a list of customers exempted from the $10,000 cash reporting requirement to review and approve each such list.

B. TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY

These four bills, S. 571, S. 572, S. 1335, and S. 1385 were the subject of substantial testimony at a hearing before the Committee on money laundering legislation, held on October 29, 1985. They were also discussed at two subsequent hearings on money laundering, held on March 18 and 25, 1986, as part of the Committee's hearings on white collar crime.

At the first hearing on October 29, 1985, the Committee heard testimony from the following witnesses: Senator Alfonse D'Amato (R-N.Y.); Stephen S. Trott, Assistant Attorney General, Criminal Division, Department of Justice; David D. Queen, Acting Assistant Secretary for Enforcement and Operations, Department of Treasury; James D. Harmon, Jr., Executive Director and Chief Counsel to the President's Commission on Organized Crime; Richard Arcara, District Attorney, representing the National District Attorneys Association; Neal R. Sonnett, Chairman, Legislative Committee of the National Association of Criminal Defense Lawyers; Earl B. Hadlow, Vice Chairman, Barnett Banks of Florida, representing the American Bankers Association; William W. Nickerson, Attorney, former Deputy Assistant Secretary of the Treasury; and Jerry Berman, Chief Legislative Counsel, American Civil Liberties Union. The Committee also received a statement from California Attorney General John Van De Kamp on behalf of the National Association of Attorneys General.

Senator D'Amato and James Harmon from the President's Commission on Organized Crime spoke in favor of S. 572. Both empha-

sized, however, that their most important concern was the swift passage of some money laundering legislation, whatever form it might take.

The witnesses from the Department of Justice and the Department of the Treasury spoke in favor of S. 1335, the administration's bill. They emphasized the need for strong legislation that would criminalize all forms of money laundering transactions and that would increase the Treasury Department's power to investigate money laundering. Assistant Attorney General Trott criticized the scienter standard incorporated in S. 572, the Organized Crime Commission bill, and S. 1385, Senator DeConcini's bill, under which a person could be found guilty of money laundering if a person simply had "reason to know" that the funds involved in a transaction might come from crime. He emphasized that this language could be construed to include even negligent participation in such a transaction. He argued that the proper scienter standard should be the higher "reckless disregard" standard proposed in the administration's bill.

Other witnesses at the hearing criticized portions of the administration's bill, the Organized Crime Commission bill, and Senator DeConcini's bill. Richard Arcana, from the National Association of District Attorney's expressed concern that the new substantive offense in the administration's bill would sweep so broadly as to overlap with State laws illegalizing theft, robbery, and even bad checks. He also expressed concern that the forfeiture provisions in the administration's bill could be construed to preempt State forfeiture actions.

Neil Sonnett of the National Association of Criminal Defense Lawyers expressed concern about both the "reckless disregard" and the "reason to know" scienter standards, arguing that either of these standards could lead to prosecution of people who were not in any way involved in money laundering. He urged the Committee to adopt a standard requiring a showing of intent on the part of the accused money launderer. He also opposed the creation of an offense for receiving the proceeds of a crime because the scienter standard in that section was so broad as to encompass the receipt of funds that a person subjectively "believed" might come from crime.

Mr. Sonnett also opposed the amendment of Rule 17 of the Federal Rules of Criminal Procedure proposed in the administration's bill, arguing that the proposed amendment encompassed matters totally unrelated to money laundering and was so broad as to bar a subpoened grand jury witness from even discussing a subpoena with his or her attorney. He similarly spoke against the proposed crime of facilitation as reaching offenses totally unrelated to money laundering with a prohibition already encompassed in existing statutes. He also expressed concern about the use of forfeiture and money laundering legislation to block the payment of fees to private defense counsel.

Earl Hadlow, representing the American Bankers Association, also opposed the scienter standards in the administration's bill and the Organized Crime Commission bill. He argued that, without an intent requirement, the Government could prosecute a bank teller for accepting deposit of a pay check from a corporation, such as

E.F. Hutton, that had been convicted of a felony. He also spoke against the amendments to the Right to Financial Privacy Act in the administration's bill, including: the provision authorizing banks to turn over customer records to Government investigators if bank officers, in their discretion, believed that the records might be relevant to a possible violation of law; the provision easing the transfer of customer records between Government agencies; the provision easing the requirements that customers be notified of any release of their records; and, the provision preempting State and local privacy laws under which many banks operate.

Mr. William Nickerson, former Deputy Assistant Secretary of the Treasury, opposed the requirement in Senator DeConcini's bill that the Treasury Department quarterly review bank lists of persons exempted from the reporting requirements of the Bank Secrecy Act. He observed that the Treasury Department was experiencing substantial backlog in reviewing the reports already required to be filed, without the added burden of reviewing exemption lists. He also opposed what he views as an evisceration of the protections of the Right to Financial Privacy Act proposed in the administration's bill.

Jerry Berman of the American Civil Liberties Union echoed the concerns of prior witnesses about the possible evisceration of the Right to Financial Privacy Act, and especially about the preemption of State privacy laws. He also opposed the "reckless disregard" scienter standard in the administration's bill as well as the bill's coverage of any commercial transaction, regardless of the nature of the transaction. He viewed the other provisions in the administration's bill, such as the revision of grand jury procedures, the creation of a Federal crime of facilitation, and the expansion of forfeiture procedures, as a prosecutor's "wish list," which he urged the Committee to reject.

At the March 1986 hearings on money laundering, the Committee again heard testimony from Assistant Attorney General Trott and Acting Assistant Treasury Secretary Queen as well as from the following witnesses: William Weld, U.S. Attorney for the District of Massachusetts; Robert J. Hodges, representing the American Bankers Association; Samuel Buffone, representing the American Bar Association; and Richard Dionne, President of the Provident Institution for Savings. While the bulk of the testimony at these hearings concerned the prosecution of money laundering cases under existing provisions of the Bank Secrecy Act, the administration witnesses again stressed the need to enact a new substantive offense of money laundering, and also urged the enactment of S. 2306, a bill introduced by Senator D'Amato to fill a loophole in the Bank Secrecy Act caused by three recent Federal court decisions, *United States* v. *Anzalone*, 766 F. 2d 676 (1st Cir. 1985), *United States* v. *Varbel*, 780 F. 2d 758 (9th Cir. 1986), and *United States* v. *Denmark* 779 F. 2d 1559 (11th Cir. 1986). These decisions refused to apply the sanctions of the Bank Secrecy Act to transactions "structured" to evade the act's $10,000 cash reporting requirement. S. 2306 would also have authorized the forfeiture of funds involved in a transaction conducted in violation of the Bank Secrecy Act.

Robert Hodges from the American Bankers Association and Samuel Buffone from the American Bar Association both stressed

the need for care in drafting new money laundering legislation. Mr. Buffone testified that the bills then pending in the Senate "go much further than is necessary in providing effective tools to combat money laundering." Richard Dionne from the Provident Institution for Savings, which had recently been convicted of Bank Secrecy Act violations, called for banks to ensure greater voluntary compliance with existing law.

C. COMPROMISE LEGISLATION

During the months following the March hearings, Committee staff members met repeatedly to addresss the concerns raised about the pending money laundering bills. Meetings were held with representatives from the Departments of Justice and Treasury, as well as from the American Bar Association, the American Bankers Association, and the American Civil Liberties Union. The product of these meetings was the formulation of new legislation, supported by all of the groups consulted, crafted through the efforts of Senators Thurmond, Biden, and DeConcini, with support and assistance from other members of the Committee.

The compromise legislation that resulted from this process addresses the concerns raised about scienter by eliminating both the "reason to know" and the "reckless disregard" standards, and substituting the higher standard of "knowing" in the new Federal crime of money laundering. Similarly, the compromise addresses concerns raised about preempting State criminal law by limiting the new crime to transactions that involve the proceeds of specified Federal offenses. Additionally, the compromise addresses concerns about whether the new crime should be limited to bank transactions or extend to all commercial transactions by covering those commercial transactions that are designed to facilitate a crime or to conceal the proceeds of crime.

The compromise legislation also attempts to strike a balance between Government investigators' legitimate need for information and the privacy rights of bank customers. Rather than authorizing banks to turn over customer's records whenever they subjectively believe the customer might be engaged in a crime the compromise authorizes banks to turn over three specified pieces of information when they suspect illegal activity—the customer's name, account number (or other identifying information), and the nature of suspected illegal activity. Rather than giving banks a "good faith" defense to suit whenever they release customers' records to Government investigators, the compromise gives banks such a defense only for providing these same three pieces of information. Similarly, rather than preempting all State privacy laws, the compromise preempts only those laws that prohibit banks from turning over these three pieces of information.

The compromise does not change current law on the transfer of customers' bank records and Bank Secrecy Act filings between Government agencies. It does not require the Treasury Department to sift through the exemption list of every bank in the country on a quarterly basis. It also would not revamp Rule 17 of the Federal Rules of Criminal Procedure, but rather adds a limited statutory provision authorizing courts to order banks to delay notifying their

customers of the receipt of a grand jury subpoena. The compromise also does not create entirely new Federal crimes of facilities or receiving criminal proceeds. It does, however, create a new crime illegalizing transacting structured to evade the reporting requirements of the Bank Secrecy Act.

With respect to forfeiture for violation of the new money laundering offense, the compromise does not authorize the forfeiture of any funds conceivably "involved in" a money laundering transaction, but rather the commissions earned by money launders. It also would authorize the forfeiture of the proceeds of foreign drug offenses, and all funds involved in structured transactions.

D. INTRODUCTION OF COMPROMISE LEGISLATION

The compromise bill, S. 2683, was introduced by Senators Thurmond and Biden, the Chairman and Ranking Minority Member of the Committee, along with Senators DeConcini and D'Amato on July 24, 1986. Recognizing the enormous importance of the legislation, each of the sponsors called for speedy consideration of the bill. As Chairman Thurmond noted, "Creation of a money laundering offense is imperative if our law enforcement agencies are to be effective against the organized criminal groups which reap profits from unlawful activity by camouflaging the proceeds through elaborate laundering schemes." Senator Biden stated, "We cannot afford to waste any time. We need this weapon against drug traffickers and organized criminals, and we need it now."

S. 2683 was referred to the Judiciary Committee, where it was considered at a special executive session held July 31, 1986. At that session, the committee approved the bill by unanimous consent.

IV. SECTION-BY-SECTION ANALYSIS

Section 1: This section sets out the title of the bill, the "Money Laundering Crimes Act of 1986."

Section 2: This section establishes a new Federal crime of money laundering at section 1956 of Title 18. Unlike the existing provisions of the Bank Secrecy Act in Title 31, which deals with the problem of money laundering only indirectly (by requiring the filing of various reports and punishing the failure to do so), the new section 1956 directly proscribes certain types of transactions used to launder the funds derived from illegal activity. The new crime has several components.

Section 1956(a)(1) is the basic money laundering offense. Although it is derived in part from both the Organized Crime Commission bill, S. 572, and the administration's bill, S. 1335, it differs from those measures in several important respects. First, it employs a scienter standard of "knowing," rather than "reason to know" or "reckless disregard." In fact, it has two "knowing" requirements. In order to prove a violation of the offense, the Government must show not only that the defendant knew the property involved in a transaction was the proceeds of crime, but also that the defendant either intended to facilitate a crime or knew that the transaction was designed to conceal the proceeds of a crime.

The "knowing" scienter requirements are intended to be construed, like existing "knowing" scienter requirements, to include

instances of "willful blindness." See *United States* v. *Jewel*, 532 F. 2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976). Thus, a currency exchanger who participates in a transaction with a known drug dealer involving hundreds of thousands of dollars in cash and accepts a commission far above the market rate, could not escape conviction, from the first tier of the offense, simply by claiming that he did not know for sure that the currency involved in the transaction was derived from crime. On the other hand, an automobile car dealer who sells a car at market rates to a person whom he merely suspects of involvement with crime, cannot be convicted of this offense in the absence of a showing that he knew something more about the transaction or the circumstances surrounding it. Similarly, the "intent to facilitate" language of the section is intended to encompass situations like those prosecuted under the aiding and abetting statute in which a defendant knowingly furnishes substantial assistance to a person whom he or she is aware will use that assistance to commit a crime. *See, e.g., Backun* v. *United States*, 112 F. 2d 635 (4th Cir. 1940).

This section also differs from the provisions of the Organized Crime Commission bill and the administration's bill in the nature of the transactions that it covers. The Organized Crime Commission bill limited its coverage to bank transactions, while the administration's bill extended coverage to all transactions affecting interstate or foreign commerce. This section takes a qualitatively different approach, applying its coverage to those transactions that can be said to constitute the core of money laundering—transactions designed to conceal or disguise the nature, location, source, ownership, or control of criminal proceeds, or to evade Federal or State cash reporting requirements. This language is intended to include transactions designed to conceal the identity of the participants to a transaction, where it can also be proved that the funds involved in the transaction are in fact the proceeds of crime.

This section differs from the Organized Crime Commission bill and the administration's bill in its enumeration of the crimes from which the property involved in the transaction must derive. The Organized Crime Commission bill limited its application to the proceeds of the Racketeer Influenced and Corrupt Organizations [RICO] predicate crimes set out at 18 U.S.C. section 1961(1). The administration's bill sought to cover the proceeds of *any* State or Federal crime. This section attempts to strike a balance by covering the proceeds of Federal financial offenses and foreign drug offenses as well as RICO predicate offenses. The precise crimes covered under this section are discussed below in connection with definition section (c)(7), along with the definitions of numerous other terms used in this section.

It should be noted that the section's limitation on the crimes from which the proceeds involved in a transaction must come applies to all of the section's components except one. The list of crimes is encompassed in the term "specified unlawful activity" (the definition of which is discussed below). The section requires that the property involved in a transaction must in fact be proceeds of "specified unlawful activity," and that the participant to the transaction must intend to facilitate "specified unlawful activity" or know that the transaction is designed to conceal the pro-

ceeds of "specified unlawful activity." However, in order to fall within the section, the participant need not know that the property involved in the transaction represents the proceeds of "specified unlawful activity." He or she need only know that it represents the proceeds of some form of unlawful activity. This distinction is drawn in order to prevent a defendant from escaping conviction by merely alleging that he or she thought the property involved represented the proceeds of a crime not covered in the term "specified unlawful activity." It was reported to the Committee that such a defense has been successfully raised in other countries whose statutes do not draw the distinction drawn in this section and it is the Committee's intention to avoid that result.

Section 1956(a)(2) is designed to illegalize international money laundering transactions. It covers situations in which money is being laundered by transferring it into the United States as well as those in which money is being laundered by transferring it out of the United States. The inclusion of this section is intended to support recent United States' efforts to obtain international cooperation to halt the flow of drug money, and to prevent the United States from becoming a haven in which foreign drug traffickers can keep or invest their earnings.

The concept for inclusion of this section is derived from the provision in the administration's bill making illegal the receipt of the proceeds of foreign drug offenses. This section, however, avoids two pitfalls of that provision, which would have been triggered by the mere receipt of property and by the recipient's mere "belief" that the property represented the proceeds of crime. This section, by contrast, requires that the accused defendant engage in an act of transporting or attempted transporting and either intend to facilitate a crime or know that the transaction was designed to conceal a crime. As with the prior section, the knowledge requirement of this section should be construed to encompass instances of "willful blindness"; and the "intent to facilitate" language should also be construed in accord with *Backun* v. *United States, supra.*

Section 1956(a)(3) is designed to illegalize transactions conducted to facilitate evasion of Federal income taxes. Specifically, the section covers transactions conducted to facilitate violations of sections 7201 and 7206 of the Internal Revenue Code. Although the Committee was made aware of decisions construing those sections of the tax code to cover individuals who facilitate tax evasion, the Committee concluded that it is appropriate to create a special penalty for those whose job it is to launder unreported income, in particular unreported income derived from racketeering and drug-related offenses. It is often the case that organized crime investigations result in convictions only for tax evasion, and in those cases it is important that the Government be able to pursue money launderers who may have assisted the convicted felons.

The section, as drafted, does not require that the funds involved in a transaction represent the "proceeds" of tax evasion, because tax evasion, unlike other crimes, does not have any clearly identifiable "proceeds." Rather, the section requires that the transaction be conducted with the intent to facilitate tax evasion. The section also requires that the funds involved in the transaction represent the proceeds of "specified unlawful activity," as defined in section

(c)(7). This is done in order to ensure that the tax evasion involved in the transaction is not run-of-the-mill inflation of deductions or the like, but rather the nonreporting of income derived from racketeering, foreign drug operations, or other heinous crimes.

As is true for sections (a)(1) and (a)(2), violations of section (a)(3) are punishable by a fine of up to $250,000 or twice the value of the property involved, whichever is greater, and imprisonment for up to 20 years. The severity of these sanctions is intended to convey the seriousness with which the Committee views money laundering activity, and the importance of deterring such activity for the public good.

Section 1956(b) authorizes the imposition of civil penalties on those found to have committed any of the acts proscribed in section (a). As with most civil provisions, the standard of proof for imposition of such a penalty is a preponderance of the evidence. The maximum amount of such a civil penalty is the value of the property involved in the illegal transaction or $10,000, whichever is greater. If imposed, such a civil penalty is payable to the United States. This section does not create a private civil remedy, in which penalties would be payable to a prevailing private litigant.

The section is intended to authorize the imposition of a civil penalty in addition to any fine imposed for the criminal offense. Moreover, it should be noted that the new forfeiture provisions of Chapter 46 may be applied in addition to the civil and criminal penalties. Thus, a person who violates section 1956 by laundering $250,000 might have the funds civilly forfeited, be subject to a fine of another $250,000 if convicted of the criminal offense, and pay a civil penalty of another $250,000. For payment of the criminal fine and civil penalty, the Government may look to other assets of the defendant not involved in the offense.

Section 1956(c)(1) sets out the definition of the phrase "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" as used in section (a)(1). As explained above, the significance of this phrase is that the defendant need not know exactly what crime generated the funds involved in a transaction, only that the funds are the proceeds of some kind of crime that is a felony under Federal or State law. This will eviscerate the defense that a defendant knew the funds came from a crime, but thought the crime involved was a crime not on the list of "specified" crimes in section (c)(7).

Section 1956(c)(2) defines the term "conducts" to include initiating, concluding, or participating in a transaction. This ensures that section (a) applies not only to a person who deposits cash in a bank knowing that the cash represents the proceeds of crime, but also to a bank employee who accepts the cash if the employee knows that the money represents the proceeds of crime.

Section 1956(c)(3) defines the term "transaction" to include various activities involving financial institutions such as a deposit, an exchange of funds, a transfer between accounts, and the purchase of stock or certificates of deposit. The term also includes activities not involving banks, such as the purchase, sale, or other disposition of property of all kinds. It should be noted that each transaction involving "dirty money" is intended to be a separate offense. For example, a drug dealer who takes $1 million in cash from a drug

sale and divides the money into smaller lots and deposits it in 10 different banks (or in 10 different branches of the same bank) on the same day has committed 10 distinct violations of the new statute. If he then withdraws some of the money and uses it to purchase a boat or condominium, he will have committed two more violations, one for the withdrawal and one for the purchase.

Section 1956(c)(4) defines the term "financial transaction" very broadly. Because of the broad definition of the term "transaction" in section (c)(3), the term "financial transaction" is not limited to transactions involving financial institutions. It includes all forms of commercial activity. The only requirement is that the transaction must "affect interstate or foreign commerce" or be conducted through or by a financial institution which is engaged in or the activities of which affect interstate or foreign commerce, "in any way or degree." The term "affect commerce in any way or degree" is derived from the Hobbs Act, 18 U.S.C. 1951, and is intended to reflect the full exercise of Congress' powers under the Commerce Clause of the U.S. Constitution. Thus, for example, the use of the proceeds of unlawful activity to purchase a residence would be covered if any of the materials could be shown to have come from out of State.

Section 1956(c)(5) defines the term "monetary instruments" to include coin or currency of the United States or of any other country, traveler's checks, personal checks, bank checks, money orders, investment securities in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery. The definition would include cashier's checks. The phrase "coin or currency" is also intended to include gold or other precious metal coins, which are the legal tender of a country but which do not normally circulate as such, or whose value is determined by the worth of their metallic content rather than by the operation or normal currency exchange markets. "Monetary instruments" are a subset of the term "property" as used in section (a), a term that is intended to be construed liberally to encompass any form of tangible or intangible assets.

Section 1956(c)(6) defines the term "financial institution" as that term is defined in 31 U.S.C. section 5312(a)(2) and the regulations promulgated thereunder, as they may be amended from time to time.

Section 1956(c)(7) sets out the list of crimes encompassed in the term "specified unlawful activity." As explained above, the term does not include every State or Federal crime, but rather those crimes most commonly associated with organized crime, drug trafficking, and financial misconduct. This last category includes crimes such as embezzlement, bank bribery, and illegal arms sales. The prior categories include continuing criminal enterprise offenses covered under 21 U.S.C. section 848 and the RICO predicate offenses listed in 18 U.S.C. section 1961(e), with the notable exception of Bank Secrecy Act offenses. The reason for this exception is that there are not identifiable "proceeds" of a Bank Secrecy Act violation as there are for other RICO predicates. In the Committee's view, violations of the reporting requirements of the Bank Se-

crecy Act were more appropriately covered by inclusion directly in the operative language of subsection (a), where they now appear.

In order to prevent international jurisdictional conflicts, this section also clarifies that a specified offense must occur in whole or in part within the United States or be directed at the U.S. Government. The one exception is foreign drug offenses, defined as offenses against the law of a foreign nation involving the manufacture, sale, or distribution of a controlled substance. Such offenses are the subject of an international crackdown and thus are appropriately covered here.

Section 1956(d) merely states that nothing in the new section 1956 supersedes any provision of Federal or State law imposing criminal penalties or affording civil remedies in addition to those provided for in this section. Thus, a person could be charged with both a violation of the new section 1956 and a violation of the Bank Secrecy Act for causing a financial institution to fail to fill out the proper forms or to fill them out improperly.

Section 1956(e) states the violations of section 1956 may be investigated by such components of the Department of Justice as the Attorney General may direct and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate. It is intended that the two Departments will enter into a memorandum of understanding or will enter into ad hoc agreements concerning which Department will investigate which matters. In any event, the fact that one Department has investigated a possible violation that by agreement or otherwise should have been investigated by the other, or that a third agency has investigated a possible violation will not be a defense to violation and will confer no rights on any defendant.

Section 1956(f) is intended to clarify the jurisdiction of U.S. courts over extraterritorial acts that could be construed to fall within the scope of section 1956. It is not the Committee's intention to impose a duty on foreign citizens operating wholly outside of the United States to become aware of U.S. laws. Section (f) avoids this by limiting extraterritorial jurisdiction over the offense to situations in which the interests of the United States are involved, either because the defendant is a U.S. citizen or because the transaction occurred in whole or in part in the United States. An example of the latter is a situation in which a person transfers by wire the proceeds of a drug transaction from a bank in the United States to a bank in a foreign country; another example is a situation in which a person telephones instructions from the United States to one foreign bank to transfer such proceeds to another foreign bank. The section also specifies that there will only be extraterritorial jurisdiction over a transaction or series of related transactions involving more than $10,000, thus ensuring that Federal extraterritorial jurisdiction is confined to significant cases.

Section 3: This section makes two amendments to the Right to Financial Privacy Act. The changes effected are much more modest than those proposed in the administration's money laundering bill, which were the subject of criticism. Some feared that the changes proposed by the administration would undermine the entire thrust of the Right to Financial Privacy Act. By contrast, the changes included in S. 2683 are designed to correct particular problems that

have arisen and that are germane to investigations of money laundering.

Section 3(a): This section amends section 1103(c) of the Right to Financial Privacy Act, 12 U.S.C. 3403(c). Currently, section 1103(c) provides that nothing in the Act shall preclude a financial institution from notifying a government authority that the institution has information which may be relevant to a possible violation of a statute or regulation. There has been some confusion among financial institutions regarding how much information relating to the possible violation of law can be given to a Government authority under this provision without notice to the affected customers. While this provision clearly does not authorize wholesale disclosure of financial records, the financial institution must be able to give the Government authority enough information about the nature of the possible violation and parties involved in order for that authority to proceed with a summons, subpoena or search warrant for additional information. Therefore, section 3(a) makes explicit the current rule that the information a financial institution may provide includes three specific pieces of information—the name or names of the individuals conducting a suspect transaction and other identifying information concerning the individuals involved, the account number or other identifying information concerning the account, and the nature of suspected illegal activity.

The name or names that may be disclosed under this section includes the name of any corporate entity, partnership, or other organization in which an account is listed, as well as the names, if known, of any individuals involved in a suspected transaction. Other identifying information that may be disclosed about individuals includes the individual's home or business addresses or social security number, if known.

Other identifying information that may be disclosed about accounts includes, in addition to account number, the type of account (checking, savings, securities) or the interest rate paid on the account. It also includes the location of the branch or office at which the account is maintained.

The nature of suspected illegal activity that may be disclosed includes a specification of the offense that the financial institution believes is being violated, if known, or a description of the activities giving rise to the bank's suspicions. Thus, for instance, if a customer of a bank comes into the bank with regularity, every Monday, Wednesday, and Friday, to obtain a cashier's check with $5,000 in small denomination bills, the bank could describe this pattern in the information it submits to law enforcement officials, even if the bank does not know precisely what law might be violated.

It should be noted that any disclosure under this section is entirely voluntary on the part of the disclosing bank. The Committee, however, strongly encourages financial institutions to assist law enforcement efforts by providing such voluntary disclosure wherever they legitimately suspect illegal activity, consistent with the privacy rights of their customers. It is the Committee's hope that every financial institution will follow the lead of banks such as the Provident Institution for Savings to establish a formal policy that en-

courages their officers and employees to report illegal activity promptly.

Section 3(a) also establishes a limited "good faith defense" for financial institutions which provide such voluntary disclosure. Under existing section 1117(c) of the Right to Financial Privacy Act, 12 U.S.C. section 3417(c), if a financial institution provides information to a Government authority in good faith reliance on a certification by that authority that it has complied with the applicable procedures of the right to Financial Privacy Act, the institution may not be held liable for such disclosure in a civil suit by the customer whose records have been disclosed. Section 3(a) provides parallel protection for a financial institution that voluntarily provides the information listed above. However, because there is no Government certificate that changes hands in a voluntary disclosure by a financial institution, the only way an institution can assure itself of protection from civil suit under this section is if it limits its disclosures to the above information.

The section also specifies that this limited good faith defense applies to suits against any officers of an institution that is involved in a voluntary disclosure, as well as against the institution itself. Suits affected by this defense include suits brought under any theory of Federal, State, or local law. This includes suits brought under common law as well as statutory or regulatory provisions. It also includes suits brought under constitutional provisions, to the extent it may constitutionally affect such suits.

Finally, the section effected a limited preemption of State and local privacy laws. It preempts such laws to the extent they prohibit voluntary disclosure of the information specified above. It does not preempt State or local privacy laws in any other respect. As in the case of the good faith defense, this preemption applies to common law as well as State constitutional, statutory, and regulatory law, as provided for in the Supremacy Clause, U.S. Constitution article 6.

Section 3(b): This section clarifies another provision of the Right to Financial Privacy Act that has been the subject of some confusion. Section 1113(i), 12 U.S.C. 3413(i), exempts grand jury subpoenas and related court orders from the Right to Financial Privacy Act. While this exemption was designed to free the grand jury investigative process from the customer notice and other protections of the act, several courts have construed the provision in a manner that ensures more notice to customers. These courts have refused Government requests to order a financial institution that receives a grand jury subpoena to produce customer records to delay notifying its customer of the receipt of the subpoena. *See, e.g., In re Grand Jury Subpoena Duces Tecum,* 628 F. Supp. 580 (W.D. Ark. 1986); *In re Grand Jury Subpoena Duces Tecum,* 575 F. Supp. 1219 (E.D. Pa 1983). According to the President's Commission on Organized Crime, the effect of these decisions has been to jeopardize many significant organized crime investigations because financial institutions that have received record subpoenas have proceeded to notify their customers of the pendency of investigations against them.

In order to redress this problem, the administration's money laundering bill proposed to amend rule 17 of the Federal Rules of

Criminal Procedure, which regulates the issuance of all Federal grand jury subpoenas. Rather than adopting such a broad-sweeping approach, section 3(b) simply amends section 1113(c) of the Right to Financial Privacy Act to authorize delayed notification for grand jury subpoenas issued to financial institutions to obtain customer records. A court may order such delayed notification under the circumstances specified and pursuant to the procedures already provided in section 1109, 12 U.S.C. 3409, for judicial and administrative subpoenas. That section clarifies, for instance, that there must be reason to believe that there will be serious jeopardy to an investigation before a court will order delayed notification and that such an order is to be periodically reviewed by the issuing court. It also ensures, however, that delayed notification can be ordered in appropriate circumstances.

Section 4: This section sets forth several amendments to the Bank Secrecy Act. The need for strengthening the provisions of the act became apparent in the wake of several recent prosecutions under the act. Among other things, this section is designed to increase several of the penalties that may be imposed for violation of the act and to create several additional penalties. It is also designed to increase the ability of the Treasury Department to investigate violations of the act, by giving the Secretary of the Treasury the power to subpoena documentary and testimonial evidence.

Section 4(a): This section amends 31 U.S.C. 5318 to give the Secretary of the Treasury new authority to summon both testimonial and documentary evidence. It is imperative to the effectiveness of the Bank Secrecy Act that the Secretary have the ability to summon witnesses and documents, both to investigate violations of the act and to assess the appropriate level of civil penalties for violations of the act. This authority is especially critical with respect to the estimated 3,000 miscellaneous financial institutions such as casinos and foreign currency brokers, whose compliance with the Bank Secrecy Act is monitored by the Internal Revenue Service. Currently, IRS must rely on the voluntary cooperation of these institutions to insure compliance, since the IRS summons authority does not extend beyond tax matters under title 26.

Under the new section 5318(a)(4) this summons authority may be used against any financial institution, whether foreign or domestic, regulated by the Treasury Department. Concerns have been raised about the application of this authority to obtain records of foreign financial activity through the issuance of a subpoena to a U.S. branch of a predominantly offshore financial institution. The primary concern is that compliance with such a subpoena may force the institution to violate the strict financial privacy laws of other nations, such as the Bahamas or the Cayman Islands, from which records may be sought. It is the Committee's intention that efforts should be made, at least in the first instance, to resolve any conflicts that may arise between U.S. law enforcement interests and foreign secrecy laws through diplomatic efforts. If diplomatic efforts prove to be unsuccessful, however, the Committee expects such conflicts to be resolved by a careful balancing of the competing interests, in accordance with the decision of the U.S. Court of Appeals for the Eleventh Circuit in *United States* v. *Bank of Nova Scotia,* 691 F. 2d 1384 (11th Cir. 1982) and *United States* v. *Bank of*

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Nova Scotia, 740 F. 2d 817 (11th Cir. 1984). *See also, United States* v. *First National Bank of Chicago,* 699 F. 2d 341 (7th Cir. 1983).

Under the new section 5318 (a) (1) and (4), a summons may be issued only by the Secretary of the Treasury or, with his approval, by "an appropriate supervising agency" to which the Secretary has delegated Bank Secrecy Act enforcement authority, i.e., the Internal Revenue Service. It is the Committee's intention that the delegation with respect to summons issued by the IRS will not extend to persons with responsibilities less than those currently exercised by the District Chief, Examination Division, or District Chief, Criminal Investigation Division. This delegated summons authority includes not only the authority to issue summons, but to administer oaths and affirmations, receive evidence, and examine witnesses pursuant to the summons.

The new subsection (a)(4) of section 5318 specifically provides that summonses issued under it may direct the production of "such books, papers, or other data," and the provision of testimony under oath, "as may be relevant or material to an investigation described in subsection (c)." This language is intended to make clear that in determining the relevance of a summons issued under section 5318(a), courts are to apply the same general standards that they use in determining the validity of administrative subpoenas. Under the classic formulation of these standards, a summons issued under subsection (a) would be valid "if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant." *United States* v. *Morton Salt Co.,* 338 U.S. 632, 652 (1950). While judicial tribunals must satisfy themselves that information formally proffered before them is "relevant" within the meaning of the applicable rules of evidence, administrative bodies like the Treasury Department that issue compulsory process are not so limited in seeking information to discharge their duties properly. *Id.* at 642. Moreover, "[c]ourts traditionally give wide latitude in determining relevance in the context of an administrative subpoena." *United States* v. *O'Neill,* 619 F. 2d 222, 228 (3d Cir. 1980). These standards are different from the standards that courts have applied to summons issued by the Internal Revenue Service. *See, e.g., United States* v. *Powell,* 379 U.S. 48, 57–58 (1964).

Under the new subsection (b) of section 5318, the Secretary may summons a financial institution or an officer or employee of a financial institution or any person having custody of reports and records required under the Bank Secrecy Act to bring documents relevant to an investigation of compliance with any reporting or recordkeeping provision of the act. Under the new subsection (c) however, the summons for testimony is limited to civil enforcement of the Bank Secrecy Act. However, this limitation is not to be read as a restriction on using information developed from a civil summons in any criminal investigation or proceeding relating to the Bank Secrecy Act or any other matter. The Committee intends that procedures that Treasury currently uses to convey information with respect to corresponding civil and criminal Bank Secrecy Act cases will not be affected.

Under the new subsection (d) of section 5318, summoned parties will be reimbursed for the costs of compliance with the summons to

the extent of fees and mileage for travel within the United States that are paid witnesses in courts of the United States. Other costs, such as costs of copying and transporting documents, will not be borne by the Government. It should be noted, however, that an institution that chooses to produce its original records, rather than copies, shall not be required to bear any costs the Department may incur in copying all or part of those records for its own use.

The new subsection (e) of section 5318 specifies the manner for service of a summons under the section. The new subsection (f) of section 5318 establishes the procedure by which the Treasury Department may invoke the aid of the Federal courts for civil enforcement of its summons under the Bank Secrecy Act. If a person who has been issued a summons is contumacious or refuses to obey that summons, subsection (f) provides that "the Secretary of the Treasury shall refer the matter to the Attorney General," and that "[t]he Attorney General may invoke the aid" of a Federal court "to compel compliance with the summons."

In the past, some recipients of administrative subpoenas have sought to avoid compliance by arguing that in using the term "Attorney General" in a similar statute with enforcement provisions, Congress intended that only the Attorney General himself was authorized to seek judicial enforcement of those subpoenas. *See, In re Tse,* 748 F. 2d 722 (1st Cir. 1984). To preclude such frivolous legal arguments, which could substantially delay the Treasury Department in its efforts to determine whether a particular financial institution has violated the Bank Secrecy Act, the Committee wishes to make clear that the language of subsection (f) is in no way intended to derogate from the Attorney General's authority in current statutes to delegate his authority to conduct litigation on behalf of the United States.

Section 4(b): This section contains several amendments to 31 U.S.C. 5321, the civil penalty provision of the Bank Secrecy Act. Under current law, the civil penalty for willful violations of Bank Secrecy Act reporting requirements is $10,000 per violation, with an additional penalty for international transaction reporting violations. Subsection 4(b) provides for a new penalty of not more than the amount of the transaction up to $1 million, or $25,000, whichever is greater, for all willful reporting violations. As is currently prescribed under section 5321, civil penalties are reduced by an amont forfeited for violations of the act.

Section 4(b) also adds a new subsection (a)(4) to 31 U.S.C. 5321. This new section creates an increased civil penalty for willful violations of 31 U.S.C. 5314 or a regulation prescribed thereunder, relating to records and reports of foreign financial agency accounts and transactions. This section also adds a new subsection (a)(5), which provides a penalty for negligent violations of the recordkeeping and reporting requirements of the Bank Secrecy Act. Currently, sanctions exist only for willful violations; however, negligent nonfiling by banks similarly deprives the Government of important law enforcement information. The new subsection (a)(5) would provide a penalty of $1,000 per violation in cases in which a violation can be proved but the facts do not support a finding of willfulness. The Committee does not contemplate that this sanction will be applied in the case of an occasional clerical error. A violation of subsection

(a)(5) does not occur for each day a violation continues, the penalty is simply $1,000 per violation.

The new subsection (a)(6) of section 5321 is designed to clarify that criminal penalties under section 5322 and civil penalties under section 5321 are cumulative. This provision makes explicit that, if the Secretary of the Treasury assesses a civil penalty in a case and then refers the case to the Department of Justice for criminal prosecution, a court should impose criminal penalties without regard to whether a civil penalty has been imposed. Similarly, if a criminal conviction were to come before assessment of a civil penalty, the Secretary of the Treasury is free to impose the full measure of civil penalties available without regard to any criminal sanction imposed.

Section 4(c): This section establishes a 6-year statute of limitations for assessment of civil penalties under the Bank Secrecy Act. Bank Secrecy Act civil penalty enforcement actions are now governed by the general 5-year statute of limitations imposed on all civil fines and penalties by 28 U.S.C. 2462. This change is needed because many civil penalty cases have corresponding criminal actions which take many months to conclude. It is not unusual for the civil proceeding to be stayed pending the resolution of the criminal proceedings, or for the Department to hold its decision to assess a civil penalty until the conclusion of the criminal proceedings. If there is a 6-year statute of limitations for penalty assessments, fewer transactions on which civil penalties could be assessed will be precluded from civil action. In addition to this general 6-year limitation period, the section also provides that the Secretary may bring an action to recover an assessed civil penalty within 2 years from the assessment or the conclusion of a criminal action under section 5322 of title 31, whichever is later.

Section 4(d): This section amends 31 U.S.C. 5321(c) to clarify the Secretary of the Treasury's authority to mitigate all civil penalties authorized under section 5321(a), in his sole discretion.

Section 4(e): This section amends 31 U.S.C. 5322(b). Section 5322(b) provides for enhancement of the criminal penalty for violations of the Bank Secrecy Act that occur in conjunction with violations of other laws of the United States or with other illegal activities involving more than $100,000 in a 12-month period. Section 4(e) raises the maximum term of imprisonment under this enhancement from 5 to 10 years. It also changes the language of section 5322 to correct the problem of interpretation that arose in the case of *United States* v. *Dickinson,* 706 F. 2d 88 (2d Cir. 1983). In that case, the court held that the requirement of other illegal activities in excess of $100,000 referred only to reporting violations under the Bank Secrecy Act. This section now explicit that illegal activities involving more than $100,000 are not restricted to violations under the Bank Secrecy Act itself, but to any illegal activity involving the requisite amount. Illegal activities mean activities constituting an offense whether or not the person has been charged with or convicted of the offense.

Section 4(f): This section amends the definition of "monetary instrument" in 31 U.S.C. 5312(a)(3)(B). The present definition contains a list that includes several bearer-type instruments and provides for the Secretary of the Treasury to designate as monetary

instruments "similar material." This amendment, which makes explicit the Secretary's authority under current law, permits the Secretary to designate "similar material payable to a fictitious payee." This modification eliminates any possibility that the current definition could be viewed as a bar to defining monetary instrument by regulation to include checks drawn to fictitious payees, which as a matter of commercial law are not bearer paper. *See, e.g.,* Uniform Commercial Code 3-405 comment 1. Experience has proven that fictitious payee checks frequently are vehicles for money laundering and circumvention of the monetary instrument reporting requirements.

Section 4(g): This section amends the definition of United States in 31 U.S.C. 5312(a)(5). The definition now refers to "territories and possessions" of the United States. The new definition lists the territories, possessions, and the Trust Territory of the Pacific Islands. If pending legislation is enacted to change the status of the divisions of the Trust Territory of the Pacific Islands, this provision may no longer pertain to those jurisdictions. Under the legislation as proposed, laws enacted pursuant to the United States' authority as trustee will no longer be applicable to divisions of the Trust Territory other than the Northern Mariana Islands.

Section 4(h): This section amends 31 U.S.C. section 5313(a) to impose civil and criminal penalties on a person who causes or attempts to cause a financial institution not to file a required report or to file an incorrect report or to structure (or attempt or assist in structuring) a transaction to evade the reporting requirements of this title.

Under present law, money launderers are successfully prosecuted in some judicial circuits for causing financial institutions not to file reports on multiple currency transactions totaling more than $10,000 or causing financial institutions to file incorrect reports. In such cases, the actual money launderers are charged with violations of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and section 1001 (concealing from the Government a material fact by a trick, scheme, or device). For example, in *United States* v. *Tobon-Builes,* 706 F. 2d 1092 (11th Cir. 1983), the Eleventh Circuit Court of Appeals upheld a conviction under 18 U.S.C. 1001 where the defendants had engaged in a money laundering scheme in which they had structured a series of currency transactions, each one less than $10,000 but totaling more than $10,000, to evade the reporting requirements. *See also United States* v. *Massa,* 740 F. 2d 629, 645 (8th Cir. 1984), *cert. denied sub nom Skinner* v. *United States,* —— U.S. ——, 105 S. Ct. 2357 (1985); *United States* v. *Sanchez Vazquez,* 585 F. Supp. 990, 993 (N.D. Ga. 1984); *United States* v. *Konefal,* 566 F. Supp. 698 (N.D.N.Y. 1983) (prosecution for structuring upheld under title 31). In contrast, the First Circuit Court of Appeals, in *United States* v. *Anzalone,* 766 F. 2d 676 (1st Cir. 1985), the Eleventh Circuit Court of Appeals in *United States* v. *Denemark,* 779 F. 2d 1559 (11th Cir. 1986), and the Ninth Circuit Court of Appeals in *United States* v. *Varbel,* 780 F. 2d 758 (9th Cir. 1986) have held that structuring currency transactions to avoid the reporting requirements did not violate 18 U.S.C. section 1001.

Subsection (h) would codify *Tobon-Builes* and like cases and would negate the effect of *Anzalone, Varbel* and *Denemark.* It would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act. For example, a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions, would be subject to potential civil and criminal liability. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction (for example, splitting $2,000 in currency into four transactions of $500 each), would not be subject to liability under the proposed amendment.

The proposed amendment to 31 U.S.C. 5313(a) would also add a much-needed attempt provision to the Bank Secrecy Act. Under current law, a financial institution is not required to report a currency transaction until 15 days after the transaction has taken place; therefore, a reporting violation does not occur until 15 days have passed since the time of the transaction and the financial institution has failed to file a report. This situation creates two problems for prosecutions of persons who have structured their transactions to avoid the reporting requirements of the Bank Secrecy Act. First, after 15 days the money launderers may have fled, and the investigative trail may be cold. Second, an individual who has attempted to avoid the reporting requirements may escape liability if the financial institution, despite the efforts of the money launderer, files a timely, correct report. The proposed attempt provision would cure these present flaws by authorizing an earlier seizure of individuals and funds and subjecting individuals who attempt to frustrate the reporting requirements of the Act to potential criminal liability at the time of their attempt and not 15 days later.

Section 5: This section of the bill makes the new money laundering offense in 18 U.S.C. 1956 a predicate offense for other Federal offenses and, quite importantly, the authority for a wiretap, which will be useful for law enforcement agencies in detecting and prosecuting this new offense.

Section 5(a): This section makes the new money laundering offense in 18 U.S.C. 1956 and violations of the provisions of the Bank Secrecy Act (subchapter II of chapter 53 of title 31) predicate offenses for the Interstate Travel in Aid of Racketeering statute, 18 U.S.C. 1952.

Section 5(b): This section makes the new money laundering offense in section 1956 a predicate for the RICO statute, 18 U.S.C. 1961. Violations of the Bank Secrecy Act are already RICO predicate offenses.

Section 5(c): This section makes the money laundering offense in section 1956 an offense for which a Title III wiretap may be employed, by adding it to the list of such offenses in 18 U.S.C. 2516(1). Criminal violations of the Bank Secrecy Act (31 U.S.C. 5322) are already on the list of offenses for which such investigative authority may be sought.

Section 6: This section sets our a new chapter 46 in title 18 dealing specifically with forfeitures. It consists of sections 981 and 982 which prescribe civil and criminal forfeitures, respectively.

Subsection 981(a) provides for the civil forfeiture of all real or personal property involved in a violation of 18 U.S.C. 1956 (the new money laundering offense) that represents the gross receipts money launderer obtains in a money laundering transaction or property which is traceable to such receipts. By use of the word "receipts," the Committee contemplates that only the commission earned by the money launderer will be subject to forfeiture, and not the corpus laundered itself. Property involved in a financial transaction which represents the proceeds of an offense against a foreign nation is also subject to civil forfeiture. This provision, subsection 981(a)(1)(B), is intended to deter the laundering of foreign crime proceeds in the United States. Property involved in a transaction which the owner knows to be in violation of CTR reporting requirements are similarly subject to forfeiture by the Secretary of the Treasury, provided the property is not owned by a regulated bank or brokerage firm, which is protected when innocently acquiring the property. Finally, subsection 981(a)(2) insures that no owner who does not act affirmatively, or by omission, to violate the new section 1956 or the above mentioned Bank Secrecy Act provisions will be subject to forfeiture.

The procedures for accomplishing this civil forfeiture are patterned after the civil forfeiture provisions in title 21. Subsection 981(b) provides that property subject to forfeiture under subsection 981(a) may be seized by the Attorney General and, in the case funds or monetary instruments involved in a violation of section 1956, also by the Secretary of the Treasury. This is because the Treasury Department is given investigative jurisdiction, concurrent with the Department of Justice, over violations of section 1956. Consequently, subsection (b) states that property subject to forfeiture may be seized pursuant to a lawful arrest or search or when "the Attorney General or the Secretary of the Treasury, as the case may be," has probable cause to believe the property is subject to forfeiture. The phrase "as the case may be" is included to make it clear that either the Treasury Department or the Justice Department, or both if the case arises out of a joint investigation or if both Departments agree that they should act jointly, may take action with respect to a forfeiture arising from a violation of section 1956. Subsection (b) also sets out when property is subject to forfeiture with or without process, and the appropriate measures which must be taken.

Subsections (c) and (d) of section 981 relate to the custody and disposition of forfeited property, respectively. Subsection (d) clarifies that, with respect to forfeitures under subsection (a)(1)(B), the remission and mitigation provisions of title 31 will apply. Subsection (e) provides for the transfer of forfeited property to Federal,

State, or local agencies which participate directly in acts leading to forfeiture. This subsection also provides for the discontinuance of forfeiture proceedings under this section in favor of State or local forfeiture proceedings. Subsection (f) states that all title to property forfeited pursuant to this section vests in the United States, upon commission of the act giving rise to forfeiture, i.e., the money laundering transaction. Subsections (g) and (h) relate to stay of forfeiture proceedings and venue, respectively.

Subsection (i) provides for the discretionary transfer of property forfeited under this section to foreign countries participating in any acts which led to the seizure or forfeiture of such property. This subsection, in conjunction with subsection 981(a)(1)(B), is designed in part to implement article 18 of the treaty between the United States and the Italian Republic on Mutual Assistance in Criminal Matters. The U.S. Senate advised and consented to the ratification of this treaty on June 18, 1984. Article 18 of that treaty provides that both countries are to have the authority to seize assets found within their borders and to forfeit such assets for the benefit of the other country based upon a violation of the other country's laws.

The procedural aspects of seizures and forfeitures under this subsection are to be governed by the procedures provided for civil forfeitures under the customs law, as now employed under our drug laws (See, 21 U.S.C. 881(d)), in order that forfeitable property may be seized on a probable cause basis prior to entry of the order of forfeiture. Finally, transfer of any property under this subsection is within the discretion of the Attorney General and is not subject to review.

Lastly, subsection (k) provides that the forfeiture authority vested in the Attorney General and Secretary of the Treasury may be delegated.

Section 982(a) provides for the criminal forfeiture of all real or personal property involved in a violation of section 1956 which represents the gross receipts a person obtains or which is traceable to such receipts. Subsection 982(a) provides that the criminal forfeiture provisions are mandatory. In imposing sentence the judge must order the forfeiture of property described in subsection (a).

Subsection 982(b) incorporates by reference all the procedures for criminal forfeitures set out in title 21. These provisions were incorporated rather than the RICO provisions in title 18 because title 21 contains a useful provision (21 U.S.C. 853(f)) allowing the preindictment seizure of property subject to forfeiture, whereas the RICO provisions do not.

V. Agency Views

U.S. Department of Justice,
Office of Legislative and Intergovernmental Affairs,
Washington, DC, July 30, 1986.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: As you know, the Attorney General has termed money laundering "the life blood of the drug syndicates

and traditional organized crime." Thus, I am writing to express the appreciation of the Department of Justice for your and your staff's prodigious efforts to develop effective money laundering legislation, culminating with your recent introduction, along with Senators Biden and DeConcini, of S. 2683. While that bill does not contain everything the Department had sought in the money laundering area, we recognize the need to proceed on a consensus basis on this important matter and regard the bill as a generally excellent product.

In particular, certain parts of the bill are aimed at the problem of "structuring" or breaking up what is really one financial transaction into several smaller ones to evade reporting requirements. The holdings in several recent cases have created a serious gap in the law allowing certain types of money launderers—those commonly called "smurfs"—to operate with impunity.

We urgently need the passage of S. 2683 to use against these money launderers. I know that the legislative calendar is presently very crowded, but the money laundering problem is so serious and immediate that on behalf of the Department of Justice I would ask you to take whatever steps are necessary to achieve consideration of S. 2683 by the Senate as soon as possible. Again, the Department greatly appreciates your able and untiring leadership in working to enact money laundering legislation.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

DEPARTMENT OF THE TREASURY,
Washington, DC.

Hon. STROM THURMOND,
Chairman, Senate Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: Thank you for this opportunity to express the views of the Department of the Treasury on S. 2683, the "Money Laundering Crimes Act of 1986." S. 2683 is rooted in the Administration's bill, S. 1335, the "Money Laundering and Related Crimes Act of 1985," drafted jointly by the Departments of Justice and the Treasury and retains many of the provisions of that bill.

While we are pleased to note the inclusion of a new substantive crime of money laundering, we will leave specific comments on that measure to our colleagues at the Department of Justice. We wish to comment favorably on the many needed enhancements to Treasury enforcement authority under the Bank Secrecy Act which S. 2683 would provide.

We believe that these measures will contribute significantly to our goal of efficient and effective enforcement of the currency reporting and recordkeeping requirements of the Act. Full compliance with these requirements should all but close the doors of our country's legitimate financial community to money launderers.

Among the most welcome changes is civil summons authority under the Bank Secrecy Act and a new civil penalty for negligent violations of the Act. Negligent penalty authority is to be contrast-

ed with existing authority for civil penalties for willful violations, violations made with specific intent or with reckless disregard for the law. Negligent violations deprive the government of needed law enforcement information to the same extent as willful violations. The prospect of penalties for negligent noncompliance should serve as a strong inducement for better compliance.

We enthusiastically endorse the inclusion of provisions from Senator D'Amato's bill, S. 2306. That bill contained two provisions critical to Bank Secrecy Act enforcement. First, Treasury would be given forfeiture authority for domestic currency reporting violations and second, the bill would make the civil and criminal sanctions of the Bank Secrecy Act directly applicable to a person who structures transactions to avoid the currency reporting requirements. A number of recent cases have held that the current law is inadequate to sustain prosecutions for structuring.

We also believe that the proposed amendments to the Right to Financial Privacy Act (RFPA) are necessary and sensible and do not jeopardize any legitimate privacy interest. For the first time, the law will clearly state what information relating to a possible violation of law a financial institution may disclose in good faith without risking civil liability under the RFPA or under any stated cause of action. We hope that financial institutions will join us in approving heartily this measure that allows them to exercise the right and responsibility of all good citizens.

We very much appreciate the work of the Committee Staff in grappling with the complex matters at issue. The staff, both majority and minority, extended us every courtesy and spent many hours discussing Treasury's concerns. We have suggested some modifications to the bill to your staff that we hope you will consider introducing as amendments to the bill.

We commend you and the Committee for giving priority to this important and comprehensize legislation and we look forward to early and favorable Senate action.

Sincerely,

FRANCIS A. KEATING II,
Assistant Secretary (Enforcement).

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 28, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2683, the Money Laundering Crimes Act of 1986, as ordered reported by the Senate Committee on the Judiciary, July 31, 1986. We estimate that this bill will have no significant impact on the federal budget.

The bill would make it a crime to conduct a financial transaction involving the proceeds of criminal activity, to structure cash transactions to avoid reporting requirements, or to prevent financial in-

stitutions from completely fulfilling reporting requirements. The bill would authorize a sentence of a fine or imprisonment against a person, and the seizure and forfeiture of property of a person who commits such a crime. S. 2683 would also authorize the Secretary of the Treasury to collect certain information from banks about persons suspected of money laundering.

Based on information from the Department of Justice and the Department of the Treasury, we do not expect that significant additional resources would be necessary to apply the penalty, seizure, and forfeiture provisions against those who do not comply with S. 2683. Although we do not have sufficient information to estimate the additional revenues that might result from fines and seizures, such revenues would probably exceed the costs of levying and collecting them.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

VII. REGULATORY IMPACT STATEMENT

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact or paperwork will result from the enactment of S. 2683. The bill would give the Treasury Department summons authority to subpoena the records of banks, but this authority is not expected to significantly increase the paperwork burden on banks beyond that already imposed by the examination authority presently exercised by the Treasury Department. The bill does not include a proposed provision to require banks to file Bank Secrecy Act exemption lists with the Treasury Department every three months, in part because the Committee believed such a provision would impose a significant additional regulatory burden without a corresponding law enforcement benefit.

VIII. VOTE OF COMMITTEE

The Committee approved S. 2683 by unanimous consent on July 31, 1986.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 2683 are shown as follows: Existing law to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

* * * * * * *

Title 12—Banks and Banking

* * * * * * *

CHAPTER 35—RIGHT TO FINANCIAL PRIVACY

Sec.

* * * * * * *

3403. Confidentiality of financial records.

* * * * * * *

(c) Notification to Government authority of existence of relevant information in records.

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3413. Exceptions.

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(i) Disclosure pursuant to issuance of subpena or court order respecting grand jury proceeding.

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§ 3403. Confidentiality of financial records

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NOTIFICATION TO GOVERNMENT AUTHORITY OF EXISTENCE OF RELEVANT INFORMATION IN RECORDS

(c) Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. *Such information may include only the name or names of and other identifying information concerning the individuals and accounts involved in and the nature of the suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any constitution, law, or regulation of the United States or any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.*

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§ 3413. Exceptions

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DISCLOSURE PURSUANT TO ISSUANCE OF SUBPENA OR COURT ORDER RESPECTING GRAND JURY PROCEEDING

(i) Nothing in this chapter (except sections 3415 and 3420 of this title) shall apply to any subpena or court order issued in connection with proceedings before a grand jury, *except that court shall have authority to order a financial institution, on which a grand*

jury subpoena for customer records has been served, to delay notifying the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409).

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I. CRIMES

Chapter	Sec.
* * * * * * *	
45. Foreign Relations	286
46. Forfeiture	*981*
* * * * * * *	

CHAPTER 45—FOREIGN RELATIONS

* * * * * * *

CHAPTER 46—FORFEITURE

Sec.
981. Civil Forfeiture.
982. Criminal Forfeiture.

§ 981. Civil forfeiture

(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 of this title, or which is traceable to such gross receipts.

(B) Any property involved in a financial transaction (as such term is defined in section 1956(c) of this title) within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

(C) Any property involved in a transaction which the owner of the property knows to be conducted in violation of section 5313(a) or 5316 of title 31, except that no property shall be seized or forfeited under this subparagraph if the property is owned by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission.

(2) No property shall be forfeited under this section to the extent of the interest of an owner by reason of any act or omission established by that owner to have been committed without the knowledge of that owner.

(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is pursuant to a lawful arrest or search; or

(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subjection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section or of title 31, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

(e) Notwithstanding any other provision of the law, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

(1) any other Federal agency; or

(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forefeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall apply:

(1) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under this subchapter, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under this subchapter to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsec-

tion (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(k) For purposes of this section—

(1) the term "Attorney General" means the Attorney General or his delegate; and

(2) the term "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

§ 982. Criminal forfeiture

(a) The court, in imposing sentence on a person convicted of an offense under section 1956 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)–(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.

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CHAPTER 95—RACKETEERING

Sec.

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1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

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1956. Laundering of monetary instruments.

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§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

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(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, [or] (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States[.], *or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 of this title.*

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§ 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A) with the intent to facilitate the carrying on of specified unlawful activity; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $250,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to facilitate the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $250,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

(3) Whoever conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate or facilitate a violation of section 7201 or 7206 of the Internal Revenue Code of 1954 shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or a transportation described in subsection (a)(2) is liable to the United States for a civil penalty of not more than the greater of—

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) $10,000.

(c) As used in this section—

(1) the phrase "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" includes but is not limited to intitating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes but is not limited to a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes

but is not limited to a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means—

(A) any act or activity occurring in whole or in part in, or directed at, the United States, and constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(C) any act or acts constituting a continuing criminal enterprise as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 545 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms

Export Control Act (22 U.S.C. 2778), the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1702 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate.

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CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec.

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2516. Authorization for interception of wire or oral communications.

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§ 2516. Authorization for interception of wire or oral communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

* * * * * *

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1084 (transmission of wagering information), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnaping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), *"section 1956 (laundering of monetary instruments),"* section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television),

section 2252 or 2253 (sexual exploitation of children), sections 2251 and 2252 (sexual exploitation of children), sections 2314 and 2315 (interstate transportation of stolen property), section 1963 (violations with respect to racketeer influenced and corrupt organizations) or section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnaping, and assault);

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TITLE 31—MONEY AND FINANCE

* * * * * * *

CHAPTER 53—MONETARY TRANSACTIONS

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

* * * * * * *

Sec.

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5312. Definitions and application.
5313. Reports on domestic coins and currency transactions.

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5318. Compliance and exemptions.

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5321. Civil penalties.
5322. Criminal penalties.

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§ 5312. Definitions and application

(a) In this subchapter—

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(3) "monetary instruments" means—

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(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material[.] *payable to a fictitious payee.*

* * * * * * *

[(5) "United States" means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulations, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a military or diplomatic establishment.]

(5) "United States" means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands,

Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, or a military or diplomatic establishment.

* * * * * * *

§ 5313. Reports on domestic coins and currency transactions

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made. *No person shall, for the purpose of evading the reporting requirements of this subsection—*

(1) cause or attempt to cause a domestic financial institution to fail to file a report required by this subsection;

(2) cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact; or

(3) structure or attempt to structure or assist in structuring a transaction.

* * * * * * *

[§ 5318. Compliance and exemptions

[The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

[(1) delegate duties and powers under this subchapter to an appropriate supervising agency;

[(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter; and

[(3) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption by actually or constructively notifying the parties affected. A revocation is effective during judicial review.]

§ 5318. Compliance, exemptions, and summons authority

(a) The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) delegate duties and powers under this subchapter to an appropriate supervising agency, except as provided in subsection (c);

(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter;

(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution or an officer or employee of a financial institution, or a former officer or employee, or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (c); and

(5) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. This Secretary may revoke an exemption by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) The purposes for which the Secretary of the Treasury may take any action described in paragraph (3) of subsection (a) include the purpose of civil and criminal enforcement of the provisions of this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act (12 U.S.C. 1730d), or chapter 2 of Public Law 91-508.

(c) The purpose for which the Secretary of the Treasury may take any action described in paragraph (4) of subsection (a) is limited to investigating violations of this subchapter, violations of section 21 of the Federal Insurance Act (12 U.S.C. 1829b), violations of section 411 of the National Housing Act (12 U.S.C. 1730d), or violations of chapter 2 of Public Law 91-508 for the purpose solely of civil enforcement of these provisions or any regulation issued thereunder. A summons may be issued under paragraph (4) of subsection (a) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(d) A summons pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than five hundred miles distant from any place where the financial institution operates or conducts business in the United States. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expenses incurred in connection with the production of books, papers, records, or other data pursuant to the provisions of this section.

(e) Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may provide by regulation.

(f) In the case of contumacy by or refusal to obey a summons issued to any person under this section, the Secretary shall refer the matter to the Attorney General. The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation which gave rise to the summons is being or has been carried on or of which the person summoned is an inhabit-

ant, or in which he carries on business or may be found, to compel compliance with the summons. The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

§ 5321. Civil penalties

(a)[(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) is liable to the United States Government for a civil penalty of not more than $1,000. For a violation of section 5318(2) of this title or a regulation prescribed under section 5318(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.] *(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315), or any person causing such a violation, is liable to the United States Government for a civil penalty of not more than the amount of the transaction (but not more than $1,000,000) or $25,000, whichever is greater. For a willful violation of section 5318(a)(2) of this title, or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at such office, branch, or place of business at which a violation occurs or continues.*

[(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.]

(2) A civil penalty under paragraph (1) is reduced by an amount forfeited under section 5317(b).

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(4) A person willfully violating the provisions of section 5314 of this title or of a regulation prescribed under section 5314 is liable to the United States Government for a civil penalty of not more than—

(A) where the violation involves a transaction, the amount of the transaction or $25,000, whichever is greater, or

(B) where the violation involves the failure to report the existence of an account or any required identifying data pertaining to the account, the amount of the account (but not more than $250,000) or $25,000, whichever is greater.

(5) Any financial institution negligently violating any provision of this subchapter or a regulation prescribed under this subchapter is liable to the United States for a civil penalty of not more than $1,000.

(6) A civil penalty assessed pursuant to this section is in addition to any criminal penalty under section 5322 of this title based on the same transaction.

[(b) The Secretary may bring a civil action to recover a civil penalty under subsection (a) (1) or (2) of this section that has not been paid.]

(b) The Secretary may assess a civil penalty under this section within six years from the date of the transaction in which the penalty is based. The Secretary may bring a civil action to recover a civil penalty under this section within two years from the date of a penalty assessment or the conclusion of a criminal action under section 5322 of this title based on the same transaction, whichever is later.

[(c) The Secretary may remit any part of a forfeiture under section 5317(b) of this title or civil penalty under subsection (a)(2) of this section.]

(c) The Secretary of the Treasury may remit any part of a forfeiture under subsection 5317(b) of this title or may mitigate any civil penalty under subsection (a) of this section.

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§ 5322. Criminal penalties

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(b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315), while violating another law of the United States or as part of a [pattern of illegal activity involving transactions of more than $100,000] *pattern of any illegal activity involving more than $100,000* in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than [5] *10* years, or both.

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(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

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CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or

other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indicatable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indicatable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), section 891–894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketerring), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), *section 1956 (relating to the laundering of monetary instruments),*

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